

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PHAN VM HOLDING, LLC,

Plaintiff

V.

EVANSTON INSURANCE COMPANY

Defendant

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CIVIL ACTION NO. 4:19-CV-02656

JURY DEMANDED

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Evanston Insurance Company ("Evanston" or "Defendant"), files this Notice of Removal to the United States District Court for the Southern District of Texas, Houston Division, on the basis of diversity of citizenship and amount in controversy and respectfully shows:

I.
FACTUAL BACKGROUND

1. At issue is a dispute over alleged storm damages occurring on or about August 27, 2017 to a commercial property insured under Evanston's Policy No. MKLV13PP001932, effective November 4, 2016 to November 4, 2017 ("the Policy"). Plaintiff first reported the alleged Hurricane Harvey damages to Evanston on or about June 1, 2018, approximately ten months after the loss. Defendant acknowledged receipt of the claim, in writing, on or about June 4, 2018, and assigned independent adjusting company, Brush Country Claims to investigate the loss. Brush Country Claims assigned the investigation of the claim to an adjuster who inspected the subject

property on June 21, 2018, with Plaintiff's roofing contractor, Scott Lightfoot of Anderson Restoration. Upon inspection of the roof, the adjuster, Rob Finley, and Mr. Lightfoot found that the modified bitumen roof had been improperly installed which caused separations and found no evidence of wind or storm-created openings or covered damage that exceeded the Policy's 2% deductible of \$70,000. Defendant denied Plaintiff's claim.

2. On June 10, 2019, Plaintiffs filed a lawsuit styled *Phan VM Holding, LLC v. Evanston Insurance Company*; Cause No. 1135312, in the County Civil Court at Law No. 1 of Harris County, Texas.

3. Plaintiff served Evanston on June 21, 2019. Evanston answered the lawsuit on July 19, 2019.

4. Defendant files this notice of removal within 30 days of receiving Plaintiff's pleading. See 28 U.S.C. §1446(b). In addition, this Notice of Removal is being filed within one year of the commencement of this action. *See id.*

5. All pleadings, process, orders, and other filings in the state court action are attached to this Notice as required by 28 U.S.C. §1446(a) and Local Rule 81. A copy of this Notice is also concurrently being filed with the state court and served upon Plaintiff.

6. As required by 28 U.S.C. § 1446(a) and Rule 81.1 of the Local Rules, simultaneously with the filing of this notice of removal, attached hereto as Exhibit "A" is an Index of State Court Documents with attachments including all executed process, pleadings, orders, and the docket sheet. A list of counsel is attached hereto as Exhibit "B."

II. **BASIS FOR REMOVAL**

7. Removal is proper based on diversity of citizenship under 28 U.S.C. §§1332(a), 1441(a) and 1446.

A. There is Complete Diversity of Citizenship.

8. Plaintiff is a resident of Texas. *See* Plaintiff's Original Pet. § IV.

9. Defendant Evanston is a non-resident insurance company, incorporated under the laws of Illinois, and having its principal place of business at 10 Parkway North, Deerfield, Illinois 60015, and is not a citizen of of the State of Texas for diversity purposes.

B. The Amount In Controversy Exceeds Jurisdictional Requirements.

10. The amount in controversy in this case exceeds the \$75,000 jurisdictional requirement. Plaintiff's lawsuit states that Plaintiff seeks relief of \$100,000 or less and that Plaintiff will not accept more than \$75,000 at this time. Plaintiffs' Original Pet. at ¶ 6. Prior to filing this suit, however, Plaintiff served Defendant with a demand letter seeking \$509,383.27 as the actual cash value amount of the claim plus \$10,000 in attorneys' fees. *See* Exhibit C attached hereto. Attached to Plaintiff's demand was an estimate for repair to the subject property for \$848,972.11. *See id.* The Policy's deductible is \$70,000. A dispute involving a claim denial and an estimate of \$848,972.11 establishes the jurisdictional amount in controversy.

C. Removal is Procedurally Correct.

11. Evanston files this notice of removal within the 30 day time period required by 28 U.S.C. § 1446(b).

12. Venue is proper in this District and Division under 28 U.S.C. §1446(a) because this District and Division include the county in which the state action has been pending and because a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this District and Division.

13. Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this Notice.

14. Pursuant to 28 U.S.C. §1446(d), promptly after Evanston files this Notice, written notice of the filing will be given to Plaintiff.

15. Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice will be promptly filed with the Clerk of the Harris County District Court after Plaintiff files this Notice.

III. **CONCLUSION**

Based upon the foregoing, and other documents filed contemporaneously with this Notice of Removal and fully incorporated herein by reference, Defendants hereby remove this case to this Court for trial and determination.

Respectfully submitted,

SHEEHY WARE & PAPPAS, P.C.

By: /s/ D. Christene Wood

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2019, a true and correct copy of the foregoing instrument was delivered to all known counsel of record, via the Court's electronic filing system, in accordance with the Federal Rules of Civil Procedure, and any applicable Local Rules, as follows:

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/s/ D. Christene Wood

D. Christene Wood